

**United States Department of Labor
Employees' Compensation Appeals Board**

GWEN M. VAN WORMER, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Portage, WI, Employer**

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**Docket No. 05-1832
Issued: October 25, 2005**

Appearances:
Gwen M. Van Wormer, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 6, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated June 27, 2005, denying her request for a review of the written record, and a March 30, 2005 decision, denying her claim for a right shoulder injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the June 27 and March 30, 2005 decisions.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a right shoulder injury in the performance of duty causally related to factors of her employment; and (2) whether the Office properly denied her request for a review of the written record.

FACTUAL HISTORY

On December 27, 2004 appellant, then a 29-year-old mail carrier, filed an occupational disease claim alleging that beginning on December 6, 2004 she sustained an injury to her right

shoulder due to factors of her employment. She first became aware of a possible relationship between her condition and her employment on December 21, 2004. Appellant did not stop work.

In reports dated January 7 to February 23, 2005, Dr. Danny R. Beard, an attending chiropractor, provided findings on physical examination. He diagnosed subluxations in her cervical, thoracic and lumbar spine. He did not indicate that x-rays had been taken. Dr. Beard noted that appellant had experienced right shoulder pain for the past two months since she began working full time on her mail route.

By decision dated March 30, 2005, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that she sustained a right shoulder injury causally related to her employment.

By letter postmarked June 6, 2005, appellant requested a review of the written record. She submitted additional reports and clinical notes from Dr. Beard.

By decision dated June 27, 2005, the Office denied appellant's request for a review of the written record on the grounds that it was untimely filed and the issue could be addressed equally well through a reconsideration request and the submission of additional evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden to establish the essential elements of her claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or condition for which compensation is claimed is causally related to the employment injury. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.²

To establish a causal relationship between appellant's right shoulder condition and her employment, she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.³

¹ 5 U.S.C. §§ 8101-8193.

² *Donald W. Wenzel*, 56 ECAB __ (Docket No. 05-146, issued March 17, 2005).

³ *Gloria J. McPherson*, 51 ECAB 441 (2000).

ANALYSIS -- ISSUE 1

In reports dated December 27, 2004 to February 23, 2005, Dr. Beard provided findings on physical examination and diagnosed subluxations of appellant's cervical, thoracic and lumbar spine. However, he indicated that x-rays had not been taken. Under section 8101(2) of the Act, chiropractors are considered "physicians" and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist. Although Dr. Beard diagnosed spinal subluxations, he indicated that no x-rays were obtained to support the listed diagnoses. Therefore, he is not considered a physician under the Act in this case and his reports are of no probative value on the issue of appellant's claim for a right shoulder injury.⁴

There is no competent medical evidence of record establishing that appellant's right shoulder condition was caused or aggravated by factors of her employment. Therefore, the Office properly denied her claim.

LEGAL PRECEDENT -- ISSUE 1

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing, or, in lieu thereof, a review of the written record.⁵ A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which the hearing is sought.⁶ A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision for which the hearing is sought.⁷ The Office has discretion, however, to grant or deny a request that is made after this 30-day period.⁸ In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.⁹

ANALYSIS -- ISSUE 2

Appellant's request for a review of the written record was postmarked June 6, 2005, more than 30 days after the Office's March 30, 2005 decision. Therefore, appellant was not entitled to a hearing as a matter of right. The Office exercised its discretion and determined that the issue in the case, causal relationship, could be resolved through a request for reconsideration and the

⁴ *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁵ 5 U.S.C. § 8124(b) of the Act provides that, before review under section 8128(a), a claimant for compensation who is not satisfied with a decision of the Secretary of Labor is entitled to a hearing on his claim on a request made within 30 days after the date of issuance of the decision before a representative of the Secretary of Labor. Section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing; a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days. See *Charles J. Prudencio*, 41 ECAB 499 (1990).

⁶ 20 C.F.R. § 10.616(a).

⁷ *James Smith*, 53 ECAB 188 (2001).

⁸ 20 C.F.R. § 10.616(b).

⁹ *James Smith*, *supra* note 7.

submission of probative medical evidence. The Board finds that the Office did not abuse its discretion in denying appellant's untimely request for a review of the written record in its June 27, 2005 decision.

CONCLUSION

The Board finds that appellant failed to establish that she sustained a right shoulder condition causally related to factors of her federal employment. The Board further finds that the Office did not abuse its discretion in denying her untimely request for a review of the written record.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 27 and March 30, 2005 are affirmed.

Issued: October 25, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board